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DISCLOSURE OF NON-FINANCIAL INFORMATION IN THE FIELD OF COUNTERACTING CORRUPTION AND BRIBERY IN ECONOMIC PRACTICE

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Abstract: Listed companies are entities of particular interest from the point of view of building a positive image free from the phenomena of fraud. Directive 2014/895/EU of the European Parliament and of the Council of 22 October 2014 imposed an obligation on certain large entities and groups to report non-financial information on corruption and bribery. The aim of this paper is to measure the degree of such data disclosure by market operators in their published statements and reports on non-financial information. The analysis of non-financial data was performed based on the example of the 30 companies listed in the WIG30 Index. The basic research method was quantitative and qualitative analysis which referred to the verification of the degree of detail of published data on corruption and bribery, the standards and guidelines used in this area, and information on whether or not fraud was detected. The conducted research showed that economic operators show considerable restraint in disclosing such data.

Keywords: fraud, bribery, abuse, non-financial information, non-financial reporting.

1. Introduction

Corruption and bribery constitute a group of the most frequent abusive phenomena that affects almost every enterprise. They include a wide range of fraudulent acts, the effects of which may be felt both in terms of the economic situation of the entity and its position on the market. The significance of the issue is so prominent that it has found its place in non-financial reporting, introduced by EU regulations.

Non-financial reporting obligation was imposed on selected market players by Directive 2014/895/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards the disclosure of non-financial information and information on diversity by certain large entities and groups. These entities have been obliged, in addition to the financial information presented, to disclose relevant non-financial information related to the entity's operations that is necessary for an understanding of its development, performance and position (EU Directive, 2014). The information covered by the statutory obligation includes data on anti-corruption and anti-bribery policies, the results of their application, as well as due diligence procedures binding in this respect, including the risks that may adversely affect them.

In accordance with these regulations, entities themselves decide on the significance of the published information. This means that they choose which information they will disclose and to what extent. This leeway is particularly evident with regard to the investigated area of corruption and bribery, where the entities analysed show the greatest restraint. This manifests itself in demonstrating in non-financial reporting only a small amount of information on the anti-corruption solutions applied.

The paper is intended to answer the question of whether entities subject to the legal obligation to publish non-financial information reveal information about the actions taken to reduce the phenomenon of corruption and bribery to an equal scope and degree.

2. The aim, method and research material

The purpose of the paper is to measure the degree of disclosure of information on corruption and bribery in the non-financial reports of entities obliged to do so. The group of the analysed entities constituted 30 largest companies listed on the Warsaw Stock Exchange in the WIG30 index. The basic research method was quantitative and qualitative analysis.

The qualitative analysis was focused on the type of anti-corruption and anti-bribery information disclosed by market players, as stipulated in the EU regulations. Within this framework, it was verified whether the analysed entities had included in their reports information on the subject of:

- the anti-corruption policy adopted and its description,
- the adopted and applied anti-corruption procedures and their description,
- the results of applied anti-corruption policies and procedures in the form of non-financial key indicators of these policies,
- the identification and description of corruption and bribery risks,
- the non-financial key indicators adopted in this respect,
- the establishment of an internal fraud detection unit,
- the application of external guidelines or standards in the described area.

The obtained information was used to carry out a quantitative analysis which made it possible to determine to what extent the analysed group of market entities discloses information on corruption and bribery as indicated in legal regulations. As research material, the WIG30 companies' management reports and reports on non-financial information were used, which include selected non-financial issues under the anti-corruption and anti-bribery section of the EU Directive. The study period was 2018.

The results of the survey were used not only to assess the perception of fraud and abuse among market players, but also to assess the degree of their disclosure. A discussion was also held on the degree of non-homogeneity in this area. This paper is of a preliminary nature, and the results of the analysis provide the rationale for an extended study in the framework of publishing non-financial information, its comparability and evolution, as well as the development and diagnosis of fraud and economic malpractice.

3. Bribery and corruption against the background of the subject literature

Corruption is a phenomenon that has accompanied humankind since the earliest times (Gardocki, 1989; Szczątka, 1999; Kojder and Sadowski, 2002) and occurs in all areas of social life, regardless of their political, economic or cultural system. It becomes particularly strong in a period of transition or weakness of the political system, and an unstable political situation (Wojtasik, 2017; Button, Shepherd, and Blackburn, 2018).

The phenomena of corruption occur in every organization and take different forms. They constitute a violation of the rules of functioning of an institution having a specific effect on it. These acts combine various unfair practices such as corruption, embezzlement, cheating on an employer, abuse, theft, abuse of power, and many others. Hence the phenomenon of corruption has a multidimensional character perceived in legal, social, financial and ethical terms (Johnston, 2011; Turska-Kawa, Czaja, 2015). It occurs both on political (Kamiński, 1997; Stachowicz-Stanuch and Sworowska, 2012) and corporate grounds (Rothstein, 2014; Obidairo, 2016). This, in turn, causes a multitude and multiplicity of different names for acts inconsistent with ethics, resulting in the lack of a single precise term defining similar actions.

This problem has been present in the subject literature for a long time, as evidenced by the numerous attempts made to define this phenomenon by including it in sociological (Rogów and Laswell, 1963; Hankiss, 1986; Tarkowski, 1994), economic (Nowakowski, 2006; Herrera and Rodriguez, 2007; Kubiak 2013; Maćkowska, 2016; Rothstein and Varraich, 2017), and legal sciences (Miętek, 2009; Falenta, 2016).

The OECD declares that corruption is 'an abuse of a public office or function in the private sector for personal gain' (Iyer and Samociuk, 2007). Corruption is an

unethical act, a form of abuse. Corruption should be seen as the use of one's own functions, positions, power and influence to pursue one's own interests and goals (Walczak, 2018). Corruption is an extensive phenomenon due to the complexity and importance of the subject, and its analysis is extremely difficult.

The term 'abuse of power' is similar to the concept of corruption, i.e. 'the use of a position to enrich oneself through the conscious, improper treatment of tangible and intangible assets used for the employer's business' (Jasiński, 2013). The concept 'abuse' is not precisely explained in the literature, mainly due to the overtone not only of a strictly financial but also of a legal nature. This is due to the fact that there are many other terms within its limits, and the multitude of terms used and their vagueness of definition pose many problems.

Corruption includes both punishable and non-punishable acts. For example in Polish law, corrupt activities are covered by the Penal Code, which indicates illegal activities and at the same time is qualified as corrupt behaviour. These include: crimes concerning the activities of state institutions and local government, crimes regarding elections and referendums, crimes threatening credibility of documents, crimes affecting economic turnover, crimes involved in trading of money and securities (Penal Code, 1997).

One form of corruption is bribery which involves accepting a financial benefit. However, while the notion of corruption is not directly sanctioned by law, the notion of bribery is. Active and passive bribery are distinguished in Polish law. According to Articles 228 and 229 of the Penal Code, passive bribery involves the acceptance of financial gain, personal gain or its promise, and is referred to as venality. Active bribery refers to giving a financial or personal advantage as well as making promises in this respect. Both actions constitute a form of crime under Polish law and are punishable by imprisonment from six months to eight years. These provisions relate to offering this form of corruption to persons performing public functions who are public officials. Bribery, as a form of abuse, is a kind of transfer of illegal funds in the form of money, goods or other benefits that constitute a form of additional income (Dzietczyk, 2016). On the other hand, not regulated by law and thus unpunishable forms of corruption include such acts as conflict of interest, nepotism or cronyism, which are a very common problem in public life (Resolution of the Council of Ministers, 2014; Walczak, 2018).

Corruption and bribery are related activities, as bribery is one of the forms that can be used in the act of corruption (Dzietczyk, 2016). Corruption, in turn, as a broader concept, refers to the act of appropriation of someone's property (Philp, 2011). This is an activity in which one strives to achieve an assumed goal by offering or giving others a financial or personal benefit. Corruption is a form of fraud, but if it takes one of the forms of bribery or it is a crime. A fraudulent act can become a criminal offence if it constitutes a legal violation, subject to legal sanctions under the terms of the criminal code.

Disclosure of information about the occurrence of corruption is not an easy matter, as there must be sufficient rationale and evidence to confirm the occurrence

of such a phenomenon (Karpziel, 2017). Most corruption statistics are based on criminal data (Transparency International, 2019), as defined on the basis of the aforementioned Articles 228 and 229 of the Penal Code, but this does not mean that the entities themselves cannot identify such issues, however this can only be the case for actual confirmed cases, with an emphasis on fraudulent and abusive corruption rather than bribery.

Actions to reduce this phenomenon of corruption and bribery are taken at international (OECD 1999; The Council of Europe, 2002) and national level (United Nations Convention, 2003). The issues of disclosing anti-corruption practices applied in enterprises are also addressed in the literature on the subject (Manacorda, Centonze, and Forti, 2014; Joseph, Gunawan, Sawani, Rahmat, Noyem, and Darus, 2016; Blanc, Branco, Islam, and Patten, 2017; Issa and Alleyne, 2017; Masud, Bae, Manzanare, and Kim, 2019), as well as in industry studies (EY, 2013, 2018; Deloitte, 2013; PwC, 2018). In this regard, measurements are made of the type and degree of disclosure of information on counteracting corruption and bribery by entities. Despite considerable experience in the fight against corruption, these issues are still not diminishing in importance (Deloitte, 2013; Rothstein, Varraich, 2014; PwC, 2018).

4. Non-financial reporting as a source of information on corruption and bribery

Until recently, economic operators were not legally obliged to report fraud or abuse. Only the provisions of the aforementioned Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU have come into effect for disclosing such data. Point 6 of the introduction to the Directive requires certain prominent individuals and groups to publish non-financial information containing data at least on environmental, social and labor issues, respect for human rights, including the fight against corruption and bribery. In these aspects, entities should also include in the non-financial report a description of the policies, their results and associated risks. This is intended to enhance the consistency as well as comparability of the non-financial information disclosed across the European Union. Point 7 of the Directive indicates that this information may include data on the instruments used to combat corruption and bribery. However, in accordance with Article 19a of the Directive, if an entity does not apply any policy on at least one of the issues listed, the statement shall include a justification for such a decision, hence disclosure of this kind of information is in a sense voluntary.

The provisions of the Directive with respect to the issues included in the non-financial reporting were adopted under Polish law as of 26 June 2017 by the amended Accounting Act (Article 49b (2)). They are almost identical to the provisions of the Directive. However, regarding the issue of corruption and bribery, the Polish legislation has been limited to regulating only the concept of corruption, not including the term bribery.

Taking into account the provisions of both the Directive and the Accounting Act, there is no formal requirement to publish strictly defined information in a specific scope, as the regulations mentioned only indicate that at least in selected issues the entity should make non-financial data available. The legislator leaves some leeway to the entities in publishing this type of information, so it should be assumed that each entity will seek to present itself in the best way to its stakeholders and the public. The fight against corruption and bribery is therefore a sensitive area in this respect, where the entities may show considerable restraint or seek to demonstrate commitment to the issue and assessment of the effectiveness of actions taken. However, based on the reporting guidelines for non-financial information contained in the European Commission Communications (2017/C 215/01, point 4.6 d), companies should disclose data on the management methods applied in the frame of counteracting this phenomenon and the cases of its occurrence. They may also provide information on decisions taken, instruments implemented and resources in the scope of corruption and bribery reduction and monitoring their effectiveness. The European Commission emphasizes that entities can also identify ways to deal with the negative impact of corruption on the activities of institutions and to communicate their activities inside and outside the organization.

Similarly, this issue was presented on the basis of Polish law. In the Accounting Act, only the obligation to disclose in non-financial reports the anti-corruption measures taken is indicated. However, the content of this provision has been insufficiently detailed in the National Accounting Standard No. 9 “Report on activities”. This is due to the content of Article 49b section 1 of the Act, which stipulates that the statement on non-financial information is part of the report on the entity’s activity. The content of this Standard does not deviate from the EU Commission’s communication described above, nor does it introduce additional issues that should be disclosed by the entity. The only aspect suggested is to indicate the use of whistleblower policy in the company, if such a solution has been adopted.

Both the EU and national regulations leave some leeway for entities to disclose non-financial data. In practice, this causes information chaos, which in turn limits the effectiveness of management and investment decisions both at the level of the company and its investors.

5. Results of research

The scope of the published non-financial information, as part of the anti-corruption and anti-bribery framework of the EU Directive, is shown in Chart 1. Additionally, it indicates how many of the surveyed companies included it in the non-financial reports published for 2018.

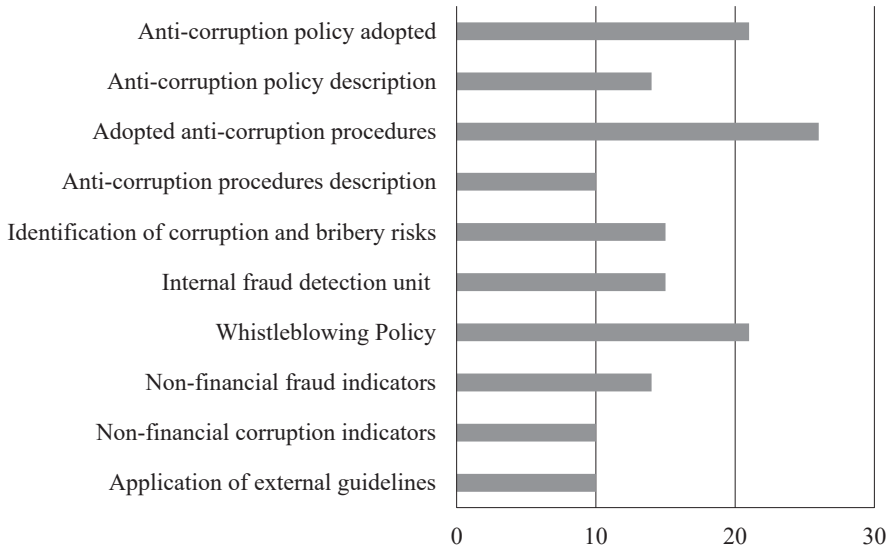


Fig. 1. Disclosure of non-financial information on corruption and bribery

Source: authors’ own analyses based on consolidated annual reports and reports on the activities of management boards of companies included in the WIG30 Index as on 09/11/2019.

According to the data presented, 70% of the surveyed entities indicated that they had a policy against fraud and abuse, including corrupt activities, but only 15% of them presented a description of this policy in the non-financial report by presenting the main aspects included in this document. In addition to the adopted policy, procedures relating to the reduction of corruption and bribery are in place in the entities under analysis. Their elaboration was shown by 87% of the respondents, but the description of the purpose of their application was indicated by only 38% of them. Only half of the entities studied published information on actions taken to identify risks in the area of corruption and bribery. The situation is similar with respect to the establishment of units or persons within an institution that have been entrusted with tasks in the area of identifying signs of fraudulent acts, including corruption. Only 50% of the studied entities indicated the establishment of such a unit or person within the structures of the institution. A significant proportion of those surveyed have implemented whistleblowing procedures or other forms of reporting irregular activities in order to detect signs of fraudulent, including corrupt practices.

Some entities measure fraud and corruption using non-financial indicators in this area. Substantially more entities, i.e. 47%, use indicators to measure fraudulent acts, while only 33% take such actions in the context of corruption. This is most likely due to the fact that fraudulent conduct is a kind of a premise for committing a crime, while corruption, if it is a criminal act, is by far more difficult to prove. Yet, it has been observed that the majority of entities, as a form of limiting acts of fraud and

corruption, indicate organizing training courses for management and employees on how to prevent undesirable phenomena in this area.

The data analysed showed that only 33% of studied entities refer to the application of the standards and guidelines developed for this area as part of the fight against corruption and bribery, and these are in the vast majority of cases the Global Reporting Initiative (GRI) standards. It is worth mentioning that these standards are recommended by the Directive as guidelines supporting non-financial reporting.

Figure 2 presents the degree of disclosure of information on detected corruption or other violations by indicating the number of companies that have included data on the subject in the non-financial reports for 2018.

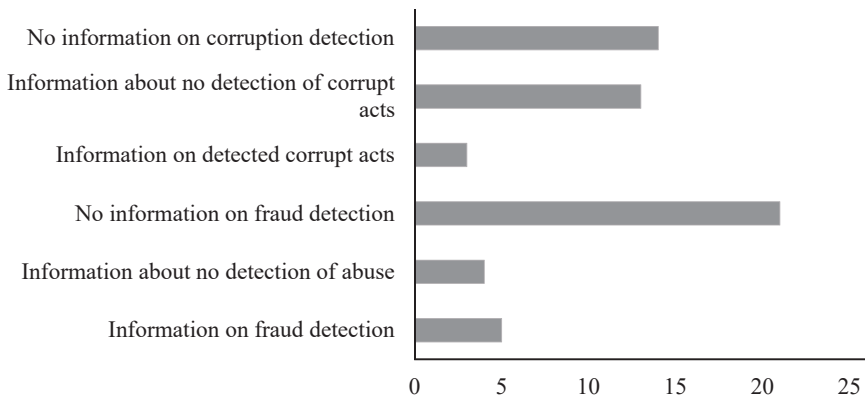


Fig. 2. Disclosure of information on whether or not corruption and fraudulent activities have been detected in non-financial reports

Source: authors’ own analyses based on consolidated annual reports and reports on the activities of management boards of companies included in the WIG30 Index as on 09/11/2019.

The data presented in Figure 2 indicate that the entities examined in the framework of published non-financial information include information on detected violations and corrupt activities. The disclosures were verified by a division into fraudulent acts, i.e. those which do not constitute a form of crime but may be a premise for committing it, and corruption, for which there must be sufficient evidence.

With respect to fraudulent acts, the information on detected infringements was indicated by 30% of the entities, of which 56% indicated that such acts were detected and 44% that no such acts were detected. As regards the disclosure of corrupt acts, 53% of the entities provided information in this area, of which 19% indicated that corrupt acts had been detected and 81% that no such actions had been identified. A significant part of the analysed entities in general did not publish information on identified violations (70%) or corrupt activities (47%) in the non-financial report. This means that these entities do not publish or measure the information on the disclosed irregular activities taking place in the entity.

6. Conclusion

The study has shown that not all market players disclose non-financial information on anti-corruption and bribery. Despite the freedom to publish this type of information provided by EU regulation, companies do not choose to demonstrate the full extent (included in the Directive) of the measures taken to reduce corruption. It should be emphasised that these data constitute a specific type of non-financial information. Their purpose is to indicate the policies adopted, procedures, risks analyzed and actions taken to reduce fraud. Supporting this information with quantitative data on detected fraud and corruption acts significantly enriches this information and thus improves the quality of non-financial reporting, hence its disclosure is essential for both internal and external investors.

The results of the qualitative analysis showed that most of the non-financial reports of the surveyed group of entities included the issues of counteracting corruption and bribery. However, not all entities included them in their full scope, and among the analysed companies there are also those that did not refer to these issues at all, which was confirmed by the results of the quantitative analysis.

This state of affairs may be seen as related to two issues. The first may be due to a lack of willingness to disclose this type of data, while the second is due to the lack of sufficient anti-corruption action by the entity.

The first reason for the reluctance to publish such information may be linked to the freedom to disclose it, existing within the framework of the regulations. It may also be the result of a company's desire to build its market position. Entities may deliberately limit the information in the reports to that which shows it in a positive light. The area of corruption and bribery may be perceived differently, depending on the effectiveness of the measures implemented to limit it. However, informational restraint in this respect results more in the detriment of the subject than in the formation of its positive image.

In addition, restrictions on disclosure of this type of information can significantly contribute to asymmetric information, under which the entity has more knowledge of corruption, and thus the company, than the investors.

The second reason for not disclosing information about anti-corruption measures may be the actual failure to take up the solutions applied in this area, which in the era and scale of the growing phenomenon of corruption seems very alarming. Information about corruption and bribery is a kind of non-financial information, but the consequences of its non-disclosure can have extensive financial consequences, both for the entity and its investors.

Therefore it is worth taking action to systematize the way and form of disclosing the anti-corruption activities undertaken by market operators, for example, on the basis of non-financial reporting, which to some extent has obliged them to do so. A reduction in the existing freedom of publication of anti-corruption data is desirable, which would limit the degree of diversity and at the same time increase their coherence and comparability. Such solutions should be sanctioned by national law.

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UJAWNIANIE INFORMACJI NIEFINANSOWYCH W ZAKRESIE OSZUSTW I NADUŻYĆ W PRAKTYCE GOSPODARCZEJ

Streszczenie: Spółki giełdowe stanowią podmioty szczególnego zainteresowania z punktu widzenia budowania pozytywnego wizerunku wolnego od zjawisk oszustw i nadużyć gospodarczych. Dyrektywą Parlamentu Europejskiego i Rady 2014/895/UE z dnia 22 października 2014 r. zmieniającą dyrektywę 2013/34/UE na niektóre duże jednostki oraz grupy został nałożony obowiązek raportowania informacji niefinansowych w zakresie korupcji i łapownictwa. Celem publikacji jest pomiar stopnia ujawniania tego rodzaju danych przez podmioty rynkowe w publikowanych przez nie oświadczeniach i sprawozdaniach na temat informacji niefinansowych. Analizy danych dokonano na przykładzie 30 spółek wchodzących w skład indeksu WIG30. Podstawową metodą badawczą była analiza ilościowo-jakościowa. Odnosiła się ona do weryfikacji rodzaju publikowanych danych z zakresu korupcji i łapownictwa, a także wykorzystywanych w tym zakresie standardów i wytycznych oraz informowania o wykrytych bądź nie zjawiskach nadużyć. Przeprowadzane badanie wykazało, że podmioty gospodarcze wykazują znaczną wstrzeźliwość w ujawnianiu tego rodzaju danych.

Słowa kluczowe: oszustwa, korupcja, nadużycia, informacje niefinansowe, raportowanie niefinansowe.